IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 13313 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

THE STATE OF GUJARAT - Applicant(s)
Versus
ABHAY RATILAL SHAH - Respondent(s)

==========

Appearance :
MR AY KOGJE, APP for Applicant(s) : 1,
MR KB ANANDJIWALA for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/05/2007

ORAL JUDGMENT

1. This application has been filed by the applicant seeking cancellation of bail granted to respondent herein by the learned Additional

Sessions Judge by an order dated 19th August, 2006.

2. The case arises out of a complaint dated 3rd May, 2006 filed by one Mehmood Haji Abdulgani Vhora. Broadly stated, the complaint alleges that brother of the complainant was attacked by several persons forming a part of the crowd of about 500 to 1000 people excited by communal frenzy. The complainant who himself was an eye witness has stated inter-alia that on 2nd May, 2006 at about 11:30 at night, the crowd of about 500 to 1000 persons led and incited by one Ashish Joshi who was carrying a sword, had attacked the brother of the complainant, causing fatal injuries and also toppled the car in which the deceased was travelling and set the car on fire thereby also causing burn injuries to the deceased.

2.1 So far as the present respondent is concerned, the complainant states that one Abhay residing in Aditya Complex was also present in the crowd.

2.2 First charge-sheet was submitted by the police on 17th July, 2006. Respondent herein was shown as absconding. On 6th August,2006 he was arrested. He filed a bail application on 7th August, 2006 which came to be granted by learned Sessions Judge by impugned order dated 19th

August, 2006. On 29th August, 2006, the appellant submitted a supplementary charge-sheet against respondent herein. Learned Judge in his order observed that contrary to what is stated in the F.I.R., the medical evidence does not support the version that the car was overturned on the deceased or else, he would have got completely crushed. Learned Judge also observed that while arresting other accused persons respondent herein was not arrested but came to be arrested after recording of further statements. It was observed that no overt act is attributed to respondent herein in the complaint. On all these grounds, learned Judge was pleased to order release of respondent on bail on furnishing security of Rs.10,000/- and a surety of like amount.

3. Before this Court learned APP Shri Kogje submitted that learned Judge gravely erred in releasing the respondent herein on bail. It ought to have been appreciated that he was absconding for a long time. Without taking into consideration this relevant factor, learned Judge granted bail which should be cancelled. It is submitted that there are serious allegations against the respondent herein of having caused murder and complaint in this regard was lodged by eye witness.

4. On the other hand learned advocate Shri

Anandjiwala for the respondent submitted that all except accused nos. 1 and 2 have been released on bail by different orders. That there is no person by name Abhay residing in Aditya complex and only after further statement recorded long after filing of the complaint that police identified the respondent herein as the one referred to by the complainant in his complaint. He pointed out that before the learned Judge respondent herein had through documentary evidence demonstrated that there are several persons by name Abhay found in the Voters list of the locality. He submitted that after being released on bail in August 2006 there are no allegations of having misused the liberty by the respondent.

5. Having heard learned advocates appearing for the parties, I find that though certain observations regarding the exact manner in which incident may have taken place made by the learned Sessions Judge were not warranted considering the fact that he was dealing with the bail application, I find that in the totality of facts and circumstances of the case, it is not a fit case for cancellation of bail. It is by now well settled that considerations for cancellation of bail would vary from those applying when the Court is taking up a case for grant of bail. Admittedly, there are no allegations of respondent herein having misused liberty while

on bail. Despite which it would be open for this Court to cancell the bail if it is found that the Sessions Court granted the bail without taking into consideration relevant materials or any such valid reasons.

6. In this case, I find that the complainant had referred to one Abhay residing in Aditya complex who was also part of the crowd who had attacked his brother. Apparently, the case of respondent is that there is no Abhay residing in Aditya complex and only through further statement recorded long after filing of the complaint that respondent is sought to be linked with the offence. Additionally, I also find that there is no overt act attributed to the respondent in the complaint.

7. Considering all these aspect of the matter, I do not find the learned Additional Sessions Judge committed an error in releasing the respondent on bail. This application seeking cancellation of bail order is therefore, rejected. Rule is discharged.

(Akil Kureshi,J.)

(raghu)